

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:

AGSPRING MISSISSIPPI REGION, LLC, *et al.*,¹

Debtors.

Larry Tubbs, Tubbs Rice Dryers, Inc., Chief
Ventures, L.L.C. and Big River Grain, LLC,

Appellants,

v.

Agspring Mississippi Region, LLC, *et al.*,

Appellees.

Chapter 11

Case No. 21-11238 (CTG)

(Jointly Administered)

Civil Action No. 1:22-cv-00338-UNA

**APPELLEES' COUNTER-DESIGNATION OF
ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Agspring Mississippi Region, LLC (“**AMR**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), in the above-captioned cases (the “**Chapter 11 Cases**”) before the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), hereby counter-designate the following items for inclusion in the record for the appeal of the Order (I) Extending the Authorized Use of Cash Collateral; (II) Authorizing Payment to Term Lenders; and (III) Granting Related Relief [D.I. 290].²

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Agspring Mississippi Region, LLC (9147); Agspring MS 1, LLC (6456); Agspring MS, LLC (2692); Lake Providence Grain and Rice LLC (1986); and Bayou Grain & Chemical Corporation (7831). The Debtors’ mailing address is 5101 College Boulevard, Leawood, KS 66211.

² References to “D.I.” are to the docket in the Chapter 11 Cases.

COUNTER-DESIGNATION OF ITEMS FOR THE RECORD ON APPEAL			
Item	Filing Date	Docket No.	Docket Text
1.	10/01/2021	68	Notice of Hearing on Motion of the Debtors For Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of the Debtors' "Big River" Assets, (B) Authorizing the Debtors to Enter Into an Asset Purchase Agreement With A Stalking Horse Bidder and to Provide Bidding Protections Thereunder, (C) Scheduling An Auction And Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving The Sale of The Debtors' "Big River Assets" Free and Clear of Liens, Claims, Interests, and Encumbrances, and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief
2.	10/08/2021	80	Limited Objection of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC to Debtors' Motion for Entry of an Order Establishing Procedures for Interim Compensation
3.	10/14/2021	102	Certification of Counsel Regarding Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of the Debtors' "Big River" Assets; (B) Approving the Debtors to Enter Into An Asset Purchase Agreement With a Stalking Horse Bidder and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' "Big River" Assets Free and Clear of Liens, Claims, Interests, and Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief

COUNTER-DESIGNATION OF ITEMS FOR THE RECORD ON APPEAL			
Item	Filing Date	Docket No.	Docket Text
4.	10/15/2021	112	Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals and (II) Granting Related Relief
5.	10/18/2021	116	Notice of Assumption of Lease/Executory Contract /Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Costs
6.	10/29/2021	148	Affidavit of Publication of the Notice of Sale, Bidding Procedures, Auction, and Sale Hearing
7.	11/01/2021	155	Notice of Filing of Revised Sale Order
8.	11/02/2021	163	Affidavit of Publication of the Notice of Sale, Bidding Procedures, Auction, and Sale Hearing
9.	11/02/2021	167	Certification of Counsel Regarding Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Obtain Back-Up Postpetition Financing to the Extent Necessary; (II) Authorizing the Debtors to Use Cash Collateral; (III) Granting Liens and Providing Super-Priority Administrative Expense Status; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; and (VI) Granting Related Relief
10.	11/04/2021	177	Notice of Deposition and Request for Documents Pursuant to Fed. R. Civ. P. 30(b)(2), 30(b)(6), 34 and Fed. R. Bankr. P. 9014 and 7030
11.	11/12/2021	184	Certification of Counsel Regarding Order Approving Stipulation Among the Debtors, LVS II SPE XVIII LLC and HVS V, LLC
12.	11/15/2021	185	Order Approving Stipulation Among the Debtors, LVS II SPE XVIII LLC and HVS V, LLC
13.	12/06/2021	197	Notice of Withdrawal of Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC to Prohibit or Condition the Use of Cash Collateral or for Adequate Protection Pursuant to Section 363(e) of the Bankruptcy Code
14.	01/21/2022	229	Notice of Filing of Amended Statement of Financial Affairs for Agspring Mississippi Region, LLC

COUNTER-DESIGNATION OF ITEMS FOR THE RECORD ON APPEAL			
Item	Filing Date	Docket No.	Docket Text
15.	03/16/2022	297	Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay
16.	03/16/2022	298	Declaration of Larry Tubbs in Support of Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay
17.	03/16/2022	299	Declaration of Wes McBrayer in Support of Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay
18.	03/16/2022	304	Notice of Rule 30(b)(6) Deposition Filed by Big River Grain, LLC, Chief Ventures, L.L.C., Larry Tubbs, Tubbs Rice Dryers, Inc.
19.	03/17/2022	305	Transmittal of Record on Appeal to District Court BAP 22-26.
20.	03/17/2022	306	Notice of Service of Tubbs Parties Requests for Production of Documents Directed to Debtors
21.	03/17/2022	307	Declaration of Service re: (i) Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay; (ii) Declaration of Larry Tubbs; (iii) Declaration of Wes McBrayer and (iv) Notice of Rule 30(b)(6) Deposition
22.	03/17/2022	309	Secured Lenders' Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay
23.	03/17/2022	310	Complaint by LVS II SPE XVIII LLC, HVS V LLC against Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C., Big River Grain, LLC. [Adversary Case 22-50235]
24.	03/18/2022	311	Certificate of Service re: Secured Lenders' Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay
25.	03/18/2022	312	Notice of Docketing Record on Appeal to District Court. Civil Action Number: 22-338; BAP Number: 22-26

COUNTER-DESIGNATION OF ITEMS FOR THE RECORD ON APPEAL			
Item	Filing Date	Docket No.	Docket Text
26.	03/23/2022	321	Debtors' (I) Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay; and (II) Request That Parties Be Referred to Mediation
27.	03/23/2022	322	Declaration of Kyle Sturgeon in Support of Debtors' (I) Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay; (II) Request That Parties Be Referred to Mediation
28.	03/28/2022	331	Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. And Big River Grain, LLC For Leave to File Late Reply to (A) Secured Lenders' Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC For Relief from The Automatic Stay and (B) Debtors' (I) Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay; and (II) Request that Parties be Referred to Mediation
29.	03/28/2022	332	Reply by Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC in Support of Motion for Relief from Automatic Stay and in Response to Secured Lenders' Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay
30.	03/28/2022	333	Reply by Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC in Support of Motion for Relief from Automatic Stay and in Response to Debtors' Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay

COUNTER-DESIGNATION OF ITEMS FOR THE RECORD ON APPEAL			
Item	Filing Date	Docket No.	Docket Text
31.	03/28/2022	337	Plan Proponents' Combined Disclosure Statement and Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code
32.	03/28/2022	338	Debtors' Motion for Entry of an Order (I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Disclosure Statement and Plan; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Forms of Ballots; and (V) Granting Related Relief
33.	03/29/2022	339	Order Granting Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. And Big River Grain, LLC For Leave to File Late Reply to (A) Secured Lenders' Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC For Relief from The Automatic Stay and (B) Debtors' (I) Preliminary Objection to Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC for Relief from the Automatic Stay; and (II) Request that Parties be Referred to Mediation
34.	03/31/2022	346	Transcript regarding Hearing Held 3/30/2022 RE: Motion of Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C., and Big River Grain, LLC for Relief from the Automatic Stay

STATEMENT OF ISSUES ON APPEAL

1. On October 8, 2019, Larry Tubbs, Tubbs Rice Dryers, Inc., Chief Ventures, L.L.C. and Big River Grain, LLC (collectively referred to as “**Tubbs**”) filed a lawsuit in the Sixth Judicial District Court for the Parish of Madison, State of Louisiana (the “**Louisiana Litigation**”)³ against

³ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Louisiana Litigation.

AMR, Agspring, LLC (“**Agspring**”), Agspring Holdco, LLC (“**Holdco**”), Greg Kennedy, Mark Beemer, Pacific Investment Management Company, LLC, Barings LLC, Eric Knight, Bruce Chapin, ABC Insurance Company, and XYZ Insurance Company, wherein Tubbs assert claims for (i) repayment of the Note and damages against the Debtors, seeking to foreclose on the Collateral, (ii) alter ego/veil piercing, asserting that AMR, Agspring, and Holdco were not independent entities, but the alter egos of certain lenders which made loans to the Debtors prepetition (the “**Lenders**”), and (iii) fraudulent conveyance, debt recharacterization, and subordination. Upon the filing of these Chapter 11 Cases on June 10, 2021, the Louisiana Litigation was stayed pursuant to § 362 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*

2. On October 8, 2021, Tubbs filed a Motion for Relief from the Automatic Stay to pursue the Louisiana Litigation [D.I. 81] (the “**Lift Stay Motion**”).

3. On November 4, 2021, after oral argument on the Lift Stay Motion, and corresponding objection, opposition, and reply, the Bankruptcy Court held a hearing and after due deliberation denied the Lift Stay Motion [D.I. 178]. On the same day, the Bankruptcy Court entered its Final Order Authorizing the Debtors to Obtain Back-Up Postpetition Financing [D.I. 174] and the Order authorizing the distribution of the payment in proceeds of a sale of assets pursuant to Section 363 to the Lenders as the payment of the proceeds of the sale of collateral [D.I. 179].

4. On March 10, 2022, the Bankruptcy Court granted the Debtors’ Motion Extending Debtors’ Authorized Use of Cash Collateral, Granting Additional Protection and Related Relief (“**Motion**”) and authorized the Debtors to pay the prepetition lenders \$8,870,281.20 to be applied against and reduce the Prepetition Term Obligations [D.I. 244].

5. On March 16, 2022, Tubbs filed a secpmd Motion to Lift the Automatic Stay (the “**Second Tubbs Stay Relief Motion**”). The Second Tubbs Stay Relief Motion seeks to collect on Tubbs’ claims and collateral outside of the Bankruptcy Court, which is a second attempt to circumvent the bankruptcy process since their claims include estate property and derivative claims. On the same day, Tubbs filed a Notice of Appeal appealing the Order Extending Debtors’ Authorized Use of Cash Collateral, Granting Additional Protection and Related Relief [D.I. 290].

CERTIFICATION REGARDING TRANSCRIPTS

Pursuant to Rule 8009(b)(1) of the Federal Rules of Bankruptcy Procedure, Appellees hereby file this certificate stating that Appellees are not ordering any transcripts.

Dated: April 13, 2022
Wilmington, Delaware

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